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DEC 04 1989
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CERTIFIED MAIL

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(c)(4) of the Internal Revenue Code.

The information submitted discloses that you were incorporated under the laws of ██████████ on ██████████.

The purposes of the Corporation are to provide for maintenance, preservation and architectural control of the residence lots and common area within that certain tract of property described as "██████████" or ██████████, and to promote the health, safety and welfare of the residents within the above described property.

Your By-Laws provide that members are those persons or entities who hold simple title to any lot.

Your activities, as stated in your application consist of maintenance and preservation of the residential lots and common area of the residential property subdivision known as ██████████, and providing residents with maintenance service, including capital improvements, pavilion landscaping, fence repair, mowing and snow removal.

Your income comes solely from membership dues and interest. Expenses have been for maintenance, professional fees, board members attendance fees, postage and printing, lot ███, pavilion landscaping, fence repair, mowing and snow removal, and making of payments to utilities for electricity provided to common areas.

The common area is restricted to use by the ██████████ property owners, as is the common/recreation area consisting of a boat ramp, dock, boat slips, pavilion and a small beach.

Section 501(c)(4) of the Internal Revenue Code provides for the exemption from federal income tax of civic leagues or organizations not organized for profit, but operated exclusively for the promotion of social welfare.

Section 1.501(c)(4)-1(a)(2)(i) of the Income Tax Regulations provides that an organization is operated for the promotion of social welfare if it promotes in some way, the common good and general welfare of the people of the community. An organization described in this section is one which is operated for the purpose of bringing about civic betterments and social improvements.

Revenue Ruling 72-102, 1972-1 C.B., 149, states that a non-profit organization formed to preserve the appearance of a housing development and to maintain streets, sidewalks and common areas for use of residents is exempt under section 501(c)(4). Membership is required of all owners of real property in the development and assessments are levied to support the organization's activities. It was held that by maintaining the property normally maintained by a municipal government the organization served the common good and general welfare of the people of the community.

Revenue Ruling 74-99, 1974-1 C.B. 131, modified Revenue Ruling 72-102 by providing new guidelines under which a homeowners association could be exempt. These guidelines are:

1. The organization must serve a "community" which bears a reasonable recognizable relationship to an area identified as a governmental unit;
2. It must not conduct activities directed to the exterior maintenance of private residences; and
3. The common areas or facilities must be for the use and enjoyment of the general public.

Revenue Ruling 74-99 states that "...Revenue Ruling 72-102 was intended only to approve ownership and maintenance by a homeowners association of such areas as roadways and parklands, sidewalks and street lights, access to or the use and enjoyment of which is extended to members of the general public." Since access to and use of your facilities is limited to the residents of the development, you do not qualify for exemption under section 501(c)(4) and are a taxable entity. You are required to file federal income tax returns on Form 1120.

Section 528 of the Internal Revenue Code deals with organizations which are "homeowners' associations". The term "homeowners' association" for purposes of this section means an organization which is a condominium management association or a residential real estate management association.

[REDACTED]

The organization must be organized to provide for the acquisition, construction, management, maintenance and care of association property. In addition, 60% or more of the gross income of such organization for a taxable year must come from membership dues, fees or assessments from owners of residential property and 90% or more of the expenses for the organization must be expenditures for the acquisition, construction, management, maintenance and care of the association property. Under this arrangement, no part of the net earnings of the association can benefit any private individual and the association must elect to have this section apply to them in each taxable year.

We are enclosing a copy of Publication 588 which provides information concerning this section which may apply to your association.

If you do not agree with our findings regarding your exempt status under section 501(c)(4), we recommend that your request a conference with a member of our Regional Office of Appeals. Your request for a conference should include a written appeal giving the facts, law, and any other information to support your position as explained in the enclosed Publication 892. You will then be contacted to arrange a date for a conference. The conference may be held at the Regional Office, or, if you request, at any mutually convenient district office. If you will be represented by someone who is not one of your principal officers, that person will need to file a power of attorney or tax information authorization with us.

If you do not appeal this determination within 30 days from the date of this letter, as explained in the enclosed Publication 892, this will become our final determination on this matter.

Sincerely yours,

[REDACTED]

[REDACTED]

District Director

Enclosure: Publication 892
Publication 588